

Appendix 9

CONSORTIUM AGREEMENT

(to be executed by the Members)

THIS CONSORTIUM AGREEMENT ("**Agreement**") is entered into on this [●] Day of [●] 201[●]

AMONGST

1. [●], with its registered office at (referred to as the **First Part** which expression will, unless repugnant to the context include its successors and permitted assigns);

AND

2. [●], with its registered office at (referred to as the **Second Part** which expression will, unless repugnant to the context include its successors and permitted assigns);

The above mentioned parties of the FIRST [and] [,] SECOND, are collectively referred to as the **Parties** and each is individually referred to as a **Party**.

WHEREAS

- (A) Rourkela Smart City Limited (referred to as the **RSCL** which expression will, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited proposals by its Request for Proposal No. 01/ 02 (As the case may be) dated 13th

February, 2017 for Selection of Programme Management Consultant (PgMC) for Area Based Development Projects/ Smart Solutions (as the case may be) for Rourkela Smart City Limited.

- (B) The Parties are interested in jointly bidding for the Project as Members of a Consortium and in accordance with the terms and conditions of the RFP.
- (C) It is a necessary condition under the RFP that the Members will enter into a Consortium Agreement and furnish a copy of it with the Proposal.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and interpretations

In this Agreement, the capitalised terms will, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

2. Consortium

- 2.1 The Parties do hereby irrevocably constitute a consortium (the **Consortium**) for the purposes of jointly participating in the Bid Process for the Project.
- 2.2 The Parties hereby undertake to participate in the Bid Process only through this Consortium and not individually and or through any other consortium constituted for the Project, either directly or indirectly or through any of their Associates.

3. Covenants

3.1 The Parties agree that they have examined in detail and understood the terms and satisfied themselves regarding the contents of the RFP.

4. Role of the Parties

4.1 The Parties hereby agree that Party of the First Part will be the Lead Member of the Consortium and will have the power of attorney from all Parties and bind all Parties for and in conducting all business for and on behalf of the Consortium during the Bid Process and, if the Consortium is declared as the Selected Bidder, during the execution of the Project.

5. Representations of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

- (a) such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) the execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
 - (i) require any consent or approval not already obtained;

- (ii) violate any applicable law presently in effect and applicable to it;
 - (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents;
 - (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
 - (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Associates is a party that presently affects or which would have a material adverse

effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

6. Termination

This Agreement will be effective from the date hereof and will continue in full force for the entire duration of the Project in accordance with the Consultant Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is not selected for award of the Project, the Agreement will stand terminated in case the Consortium is not selected as the Selected Bidder or upon return of the Bid Security by RSCL to the Bidder, as the case may be.

7. Miscellaneous

- 7.1 This Agreement will be governed by the laws of India.
- 7.2 The Parties acknowledge and accept that this Agreement will not be amended by the Parties without the prior written consent of RSCL.
- 7.3 The competent courts at Bhubaneswar shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with this Consortium Agreement.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND

DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED For and on behalf of the PARTY OF THE FIRST PART by:	SIGNED, SEALED AND DELIVERED For and on behalf of the PARTY OF THE SECOND PART by:
Signature) (Name) (Designation) (Address)	Signature) (Name) (Designation) (Address)

In the presence of:

1

2.

Instruction:

1. *The mode of the execution of the Consortium Agreement should be in accordance with the procedure, if any, laid down by applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*

Appendix 10

**FORMAT OF POWER OF ATTORNEY
FOR APPOINTING THE LEAD MEMBER**

(On Requisite Stamp Paper)

KNOW ALL MEN by these presents that we, _____
[name of the company/partnership firm/], a company/partnership firm
incorporated under the Relevant Act, having its Registered Office at ...[Address
of the company/partnership firm] (hereinafter referred to as
“company/partnership firm”):

WHEREAS the company/partnership firm along with _____ and _____ (give
name and registered office address of other Member(s) of the Consortium) is
forming a Consortium to submit a Technical Proposal and Financial Proposal
in response to the Request for Proposal for **“Selection of Programme
Management Consultant (PgMC) for Area Based Development Projects/
Smart Solutions (As the case may be) for Rourkela Smart City Limited”**
issued by Rourkela Smart City Limited (RSCL) on 13th Feb 2017.

Whereas, it is necessary for the Members of the Consortium to designate one of
the members of the Consortium as the Lead Member with all necessary power
and authority to do for and on behalf of the Consortium, all acts, deeds and
things as may be necessary in connection with Consortium’s Proposal for the
Project and its execution.

NOW KNOW ALL MEN BY THESE PRESENTS, that _____[name of the
company/partnership firm] does hereby nominate, constitute and
appoint....[name of the lead member] having its registered office at _____,

being one of the Members of the Consortium, as its Lead Member and its true and lawful attorney (hereinafter referred to as the **Attorney**) to do and execute all or any of the following acts, deed and things for the company/partnership firm in its name and on its behalf, that is to say:

- to act as the Lead Member of the Consortium for the purposes of the Project;
- in such capacity, to act as the company's/partnership firm's official representative for submitting the Technical Proposal and Financial Proposal for the Project and other relevant documents in connection therewith;
- to sign all documents in relation to the Proposal (including clarifications and queries to the RFP) and participate in bidders and other conferences, respond to queries, submit information/documents, sign and execute contracts and undertakings consequent to acceptance of the Proposal of the Consortium;
- to submit documents, receive and make inquiries, make the necessary corrections and clarifications to the Project documents, as may be necessary;
- to sign and execute contracts relating to the Project, including any variations and modifications thereto;
- to represent the company/partnership firm at meetings, discussions, negotiations and presentations with RSCL, Government Authorities, Independent Engineer and any other Project related entity;
- to receive notices, instructions and information for and on behalf of the company/partnership firm;
- to execute all necessary agreements or documents for implementation of the Project, including the Consultant Agreement for and on behalf of the company/partnership firm;

- to do all such acts, deeds and things in the name and on behalf of the company/partnership firm as necessary for the purpose aforesaid.

AND the company/partnership firm hereby covenants with the said Attorney to ratify and confirm all and whatever the attorney may lawfully do or cause to be done by virtue of these presents.

IN WITNESS WHEREOF the company/partnership firm puts its hand and company/partnership firm stamp to this Power of Attorney on this _____ [day, month & year]

<p>The common seal of [name of the company] was here unto affixed pursuant to a resolution passed at the meeting of board of directors held on the ____ day of _____, 20__ in the presence of [name & designation of the person] and countersigned by [name & designation of the person] of the Company of [name of the company]</p>	<p>The common seal of _____ [name of the company/partnership firm] ----- ----- [name & designation of the person]</p>
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Instructions:

- (1) *The mode of execution of the power of attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- (2) *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this power of attorney for the delegation of power hereunder on behalf of the Bidder.*
- (3) *For a power of attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the*

jurisdiction where the power of attorney is being issued. However, the power of attorney provided by Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.